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SAP AG, SAP AMERICA, INC., and
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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

ORACLE USA, INC., et al.,

Plaintiffs,

v.

SAP AG, et al.,

Defendants.

Case No. 07-CV-1658 PJH (EDL)

**DEFENDANTS' STATEMENT
REGARDING PLAINTIFFS'
PROPOSED FORM OF JUDGMENT**

1 On Friday, December 10, Plaintiffs Oracle USA, Inc., Oracle International Corporation
 2 and Siebel Systems, Inc. (collectively, “Oracle” or “Plaintiffs”), filed a proposed form of
 3 judgment together with a Memorandum of Points of Authorities. Plaintiffs filed this document on
 4 their own behalf; it was not a joint filing with Defendants SAP AG, SAP America, Inc. (together
 5 “SAP”) and TomorrowNow, Inc. (collectively, “Defendants”).¹ Although the parties did meet
 6 and confer on a proposed form of judgment, there are a number of issues that remain unresolved,
 7 including: a permanent injunction against SAP; prejudgment interest; disposition of infringing
 8 materials; and specific language regarding judgment in favor of Defendants for claims brought by
 9 Oracle Systems Corporation and Oracle EMEA Ltd., as well as judgment in favor of SAP AG and
 10 SAP America, Inc. for certain claims that Plaintiffs dismissed.

11 The proposed form of judgment offered by Plaintiffs reflects Plaintiffs’ position on the
 12 prejudgment interest and disposition of infringing materials issues, and includes a declaration by
 13 Plaintiffs’ damages expert Paul Meyer, the contents of which were never disclosed to Defendants
 14 during meet and confer. Plaintiffs did not include a permanent injunction provision and excluded
 15 the paragraphs regarding judgment in favor of Defendants. Because these issues raise disputes of
 16 fact and law, Defendants contend that Plaintiffs’ proposed form of judgment and memorandum in
 17 support be treated like a motion. Based on the local rules and the Court’s hearing calendar,
 18 Defendants plan to file an Opposition to Plaintiffs’ proposed form of judgment and submit their
 19 competing form on Wednesday, December 29 (with Plaintiffs’ reply due on January 5), unless the
 20 Court directs otherwise.

21 Further, Defendants note that if Plaintiffs intend to separately move for injunctive relief
 22 against SAP, the proposed form of judgment that Plaintiffs submitted cannot be considered final.
 23 Specifically, 28 U.S.C. § 1291 provides that “courts of appeals . . . shall have jurisdiction of
 24 appeals from all final decisions of the district courts of the United States” 28 U.S.C. § 1291.
 25 A decision is final for purposes of § 1291 if the district court’s decisions “ends the litigation on
 26 the merits and leaves nothing for the court to do be execute the judgment.” *Coopers & Lybrand*

27 ¹ It may not have been clear to the Court who filed this Proposed Form of Judgment, as
 28 Plaintiffs did not comply with Local Rule 3-4’s requirements for the first page of a filing,
 including listing the specific counsel presenting the paper for filing.

1 v. *Livesay*, 437 U.S. 463, 467 (1978) (citation omitted); *see also Sierra Club v. Dep't of Transp.*,
 2 948 F.2d 568, 571 (9th Cir. 1991) (finding that order forming basis of cross-appeal was not final
 3 under 28 USC 1291 because it did not dispose of all claims); *Warehouse Restaurant, Inc. v.*
 4 *Customs House Restaurant, Inc.*, 726 F.2d 480 (9th Cir. 1984). When there remains an un-ruled-
 5 upon request for injunctive relief, a district court cannot order “final” judgment because there
 6 remains something for the court to do. *See e.g., Warehouse Restaurant*, 726 F.2d at 481 (“We
 7 dismiss for lack of jurisdiction because the district court’s deferral of [an]injunction makes its
 8 judgment non-final and thus not within this court’s purely statutory jurisdiction.”). Defendants
 9 request that the Court seek clarification from Plaintiffs regarding whether they consider their
 10 proposed form of judgment final, or whether they plan to separately move for injunctive relief.

11
 12 Dated: December 13, 2010

JONES DAY

13 By: /s/ Tharan Gregory Lanier

14 Tharan Gregory Lanier

15 Counsel for Defendants
 16 SAP AG, SAP AMERICA, INC., and
 17 TOMORROWNOW, INC.